

Defense Department Invokes Geneva Conventions to Withhold Torture Photos

By [ACLU](#)

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CIA Refusing to Confirm or Deny Existence of Documents Reported in the Media

“Until now, this administration has shown only contempt for the Geneva Conventions, and it has built its policies dismissing the application of international humanitarian law,” said Anthony D. Romero, Executive Director of the ACLU. “It’s simply astounding that the Defense Department has now invoked the Geneva Conventions to suppress evidence that prisoners have been abused. The government cannot cloak its attempts to protect itself from public embarrassment in a newfound concern for the Geneva Conventions.”

Through a Freedom of Information Act lawsuit, the ACLU and the New York Civil Liberties Union have sought the release of photographs and videotapes, in addition to documents, that would shed light on the systemic abuse of detainees held by the United States overseas. The Defense Department has refused to turn over photographic evidence, stating that to do so would violate the government’s obligations under the Geneva Conventions.

In its reply brief, the ACLU argued that the release of photographs would not infringe the personal privacy of the detainees depicted if all identifying details were redacted. The ACLU also submitted declarations from leading international law experts stating that releasing the photographs would be consistent with the Geneva Conventions. One expert noted that photography exposing inhumane conditions at German and Japanese concentration camps played a powerful role in the historical development of the Geneva Conventions themselves.

The ACLU also questioned the sincerity of the government’s commitment to the Geneva Conventions, pointing to previous declarations from Defense Secretary Donald Rumsfeld that the Conventions do not apply to detainees held at Guantánamo Bay or in Afghanistan. Recently, the ACLU obtained a memo signed by Lieutenant General Ricardo A. Sanchez authorizing 29 interrogation techniques for use in Iraq, including several techniques that the group says clearly violate the Geneva Conventions. Among other things, the Sanchez memo allowed interrogators to use military dogs “to exploit Arab fears” and to subject detainees to painful stress positions and extended isolation.

“The Geneva Conventions were intended to protect prisoners, not to provide governments with a basis for withholding evidence that prisoners have been maltreated,” said ACLU attorney Jameel Jaffer. “It’s disgraceful that the Defense Department is attempting to contort the Conventions in this way.”

The ACLU also charged in its brief that:

The CIA has improperly refused to confirm or deny the existence of documents that have been reported on by the press. The CIA has invoked a legal argument known as the “Glomar” response to avoid acknowledging even the existence of two Justice Department memos regarding the legality of certain interrogation techniques. It has also invoked Glomar with respect to an order from President Bush authorizing the CIA to set up detention facilities outside the United States.

The Defense Department has improperly withheld documents pertaining to the International Committee of the Red Cross. The ACLU is seeking Defense Department documents that were generated in response to concerns raised by the ICRC over the treatment of detainees at Abu Ghraib and Guantánamo Bay. Although the ICRC reports themselves are confidential, the ACLU has argued that memos produced by the Defense Department in response to the ICRC findings cannot be withheld from the public.

The CIA has failed to justify the withholding of documents on “Ghost Detainees.” The ACLU is seeking the release of documents relating to CIA Director George Tenet’s request that Secretary Rumsfeld hold an Iraqi prisoner but not list him on the prison rolls, as well as Secretary Rumsfeld’s order implementing that request. Neither the Defense Department nor the CIA has provided an adequate response to this request, and the ACLU is asking the court to order the immediate release of these documents.

U.S. District Court Judge Alvin K. Hellerstein will address the ACLU’s charges and hear oral arguments from attorneys in New York next month.

To date, the Defense Department and other government agencies have released more than 30,000 pages of documents in response to Judge Hellerstein’s order directing the government agencies to comply with a year-old FOIA request filed by the ACLU, the Center for Constitutional Rights, Physicians for Human Rights, Veterans for Common Sense and Veterans for Peace. The New York Civil Liberties Union is co-counsel in the case.

Earlier this month, the ACLU and Human Rights First filed a lawsuit charging Secretary Rumsfeld with direct responsibility for the torture and abuse of detainees in U.S. military custody. The action was the first federal court lawsuit to name a top U.S. official in the ongoing torture scandal in Iraq and Afghanistan; many of the charges are based on documents obtained through the FOIA lawsuit. The ACLU has also filed separate lawsuits naming Brig. Gen. Karpinski, Col. Thomas Pappas and Lt. Gen. Ricardo Sanchez. Details about the lawsuits are online at www.aclu.org/rumsfeld.

The FOIA lawsuit is being handled by Lawrence Lustberg and Megan Lewis of the New Jersey-based law firm Gibbons, Del Deo, Dolan, Griffinger & Vecchione, P.C. Other attorneys in the case are Jaffer, Amrit Singh, and Judy Rabinovitz of the ACLU; Arthur N. Eisenberg and Beth Haroules of the NYCLU; and Barbara Olshansky and Jeff Fogel of the Center for Constitutional Rights.

For copies of the ACLU’s reply brief, as well as government documents submitted in this case, go to www.aclu.org/torturefoia .

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